

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-339-E ORDER NO. 2022-241

APRIL 11, 2022

IN RE: Lockhart Power Company's Renewable)	ORDER APPROVING
Energy Credit Purchase and Sale)	RENEWABLE ENERGY
Agreement, and Request for)	CREDIT PURCHASE AND
Confidential Treatment)	SALE AGREEMENT AND
)	GRANTING CONFIDENTIAL
)	TREATMENT

I. INTRODUCTION

This matter comes before the Public Service Commission of South Carolina (“Commission”) on the request of Lockhart Power Company for the approval of negotiated purchase and sale agreement of renewable energy credits with an entity.

II. DISCUSSION

In 2021, Lockhart Power Company (“Lockhart” or “Company”) discussed with the SC Office of Regulatory Staff (“ORS”) a proposed tariff to govern the sale and purchase of Renewable Energy Credits (“RECs”) on a nondiscriminatory basis. ORS reviewed the proposed tariff, and ultimately recommended that, in lieu of filing such a tariff, Lockhart should instead file any such agreements with the Commission pursuant to S.C. Code Ann. § 58-27-980 and Regs. 103-303.B. While Lockhart asserts the sale of RECs is somewhat different from the statutes and regulations governing rates and charges for furnishing electricity, Lockhart requests approval from the Commission of the REC Agreement.

According to the U.S. EPA, a REC “ is a market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of

renewable electricity generation.”¹ In its review letter to the Commission, the Office of Regulatory Staff states that:

The REC Agreement identifies that a REC will equal the Environmental Attributes associated with generating one megawatt-hour of electricity from a renewable energy resource. Under the REC Agreement, the Buyer may claim exclusive rights to the environmental benefits associated with using renewable resources to generate power and avoid emissions from conventional generation sources.

ORS Letter dated 12/3/2021, p. 2.

The Agreement submitted for Commission review and approval is a negotiated contract between Lockhart and the Buyer. It is the first REC Agreement that Lockhart has entered into and the Buyer understood that such agreement would be subject to any necessary regulatory approvals. The REC Agreement indicates the REC transaction shall begin in January 2021 and continue until the REC Agreement expires on December 31, 2022. Lockhart told the Commission that the RECs will be recorded with the North American Renewables Registry. ORS also believes that the REC Agreement must be presented to the Commission for approval as required by S.C. Code Ann. Section 58-27-980 (2015) and Regulation 103-303.B. See, *ORS Letter dated 12/3/2021, p. 2.*

Lockhart Power does not agree with ORS's interpretation of Regulation 103-303.B and S.C. Code Ann. § 58-27-980 to require the filing and pre-approval of REC Agreements. Lockhart believes that Regulation 103-303.B and statute § 58-27-980 govern rates and charges for furnishing electricity and does not apply to RECs. Lockhart states that:

we believe the sale of RECs is somewhat different in that: a)
RECs are not electricity, or any functional aspect of

¹ <https://www.epa.gov/green-power-markets/renewable-energy-certificates-recs>

electricity necessary to serve customers (unlike energy, capacity, transmission or ancillary services); b) the sale of RECs is voluntary; c) a competitive market exists for RECs; and d) the referenced regulation and statute do not appear to have envisioned being applied to REC agreements. We are not aware of any other REC Agreements that have been filed with the Commission for approval.

Locket Response Letter dated 12/17/2021, p. 2. Lockhart seek that the Commission find that voluntary, bilateral, single-purpose (i.e., unbundled or "pure") REC Agreements do not require approval of the Commission pursuant to S.C. Code Ann. 58-27-980. If not, then Lockhart asks that the Commission issue an order, pursuant to Reg. 103-303.B, exempting certain REC Agreements from the requirement of Commission approval. In order to avoid the potentially significant cost and administrative burdens associated with preparing and filing a number of substantially similar and relatively immaterial REC agreements each year, we propose that any REC agreement entered into by Lockhart Power be exempted from the requirement for Commission approval if the REC agreement:

Lockhart requests that the REC Agreement be protected from public disclosure. Lockhart notes that the purchase and sale of RECs is voluntary, and a competitive market exists for RECs. The Company asserts that the disclosure of specific terms of the agreement, including the identity of the Purchaser, amounts purchased, and price paid, could disadvantage both Lockhart and the Purchaser in future negotiations.

III. APPLICABLE LAW

South Carolina Code Section 58-27-980 provides that:

No contract charge to be made to any person, corporation or municipality by any electrical utility for electricity to be

furnished for light, heat or power established subsequent to March 24, 1922, shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires, to the full extent of the powers in relation to charges conferred upon the Commission by this chapter. **Nor shall any contract establishing a rate or rates or any other contract affecting the use or disposition of its product or the charges to be paid therefor be entered into by any electrical utility without prior approval by the Commission, nor unless it be subject to amendment, modification, change or annulment by the Commission, if the public interest so requires.** But nothing herein contained shall be construed to require the Commission's approval of a contract fixing a rate already approved by the Commission and then effective, if such contract rate is fixed subject to subsequent amendment, modification, change or annulment by the Commission. Full power and authority is hereby conferred on the Commission to accomplish the purposes expressed in this section.

S.C. Code Ann. § 58-27-980 (2015) (emphasis added). Section 58-27-980 provides the Commission with the authority and jurisdiction to approve contracts made by an electrical utility. As stated by ORS, “[t]he REC Agreement identifies that a REC will equal the Environmental Attributes associated with generating one megawatt-hour of electricity from a renewable energy resource. Under the REC Agreement, the Buyer may claim exclusive rights to the environmental benefits associated with using renewable resources to generate power and avoid emissions from conventional generation sources.” *ORS Letter dated 12/3/2021, p. 2.*

Regulation 103-303.B states:

[a]ll rates, tolls, charges, and contracts involving rates proposed to be put into effect by any electrical utility shall be first approved by this commission before they shall become effective, unless they are exempt from such

approval by statute, order of the commission, or other provision of law.

S.C. Code Ann. Regs. 103-303.B (2012). The Legislature has power to regulate utility rates. *Art. IX, § 1, S.C. Constitution*. It is the Legislature that delegated certain authority to the Commission, *Bookhart v. Central Electric Power Cooperative, Inc.*, 219 S.C. 414, 65 S.E.2d 781 (1951), but the General Assembly can withdraw or amend the Commission's authority by subsequent legislative enactments. *See Clarke v. South Carolina Public Service Authority*, 177 S.C. 427, 181 S.E. 481 (1935). Section 58-27-980 provides the Commission shall approve contracts made by an electrical utility, and Lockhart has negotiated prices for the RECS, which it intends to separately account for such revenues and expenses associated with the sale of RECs in accordance with FERC accounting guidelines. The RECs will also be recorded with the North American Renewables Registry. Based upon review of the REC Agreement and information submitted by ORS and Lockhart, the Commission finds that the REC Agreement presented by Lockhart is a contract subject to the approval of the Commission as provided by S.C. Code Ann. § 58-27-980 and Regulation 103-303.B.

IV. FINDINGS OF FACT

1. The Commission finds that the REC Agreement presented by Lockhart is a contract subject to approval by the Commission as provided by S.C. Code Ann. § 58-27-980.

2. The Commission finds that the request for confidential treatment is appropriate, and that disclosure of the terms of the agreement could have detrimental commercial implications for Lockhart and the Purchaser.

3. The ORS raised no objection to the substance of Lockhart's REC Agreement; however, it is the position of ORS that such Agreement is subject to the regulatory approval of the Commission in accordance with S.C. Code Ann. § 58-27-980 and Regulation 103-303.B.

4. The Commissioner further finds that the Agreement filed by Lockhart on October 27, 2021 is in the public interest and should be approved *nunc pro tunc*.

5. Additionally, for any future REC Agreements, the Commission finds that Lockhart shall include language clearly indicating that the agreement is being entered into subject to final regulatory approval (e.g. "is subject to approval of the Commission.").

V. CONCLUSIONS OF LAW

1. The Commission concludes that S.C. Code Ann. § 58-27-980 and Regulation 103-303.B authorize and provide that REC Agreement presented by Lockhart is a contract subject to approval by the Commission.

2. The agreement is entitled to confidential treatment.

3. The agreement satisfies all legal standards for approval and is in the public interest.

VI. ORDERING PROVISIONS

IT IS THEREFORE ORDERED:

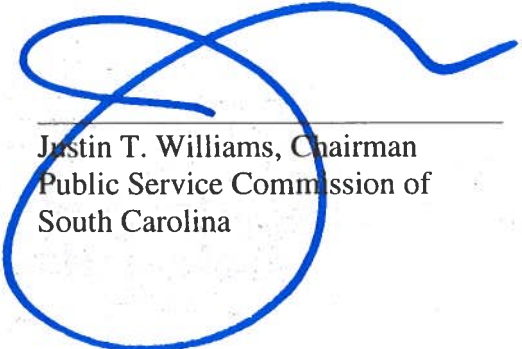
1. The request for the approval of the Renewable Energy Credit Purchase and Sale Agreement filed by Lockhart on October 27, 2021 governing the sale and purchase of Renewable Energy Credits by Lockhart Power Company to a Buyer is granted *nunc pro tunc*.

2. The request of Lockhart Power Company for confidential treatment of the agreement is granted.

3. Lockhart Power Company shall include language in future REC Agreements to clearly indicate that the agreement being entered into is subject to final regulatory approval (e.g. “is subject to approval of the Commission.”).

4. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:



Justin T. Williams, Chairman
Public Service Commission of
South Carolina